

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

NORDONIA HILLS CITY SCHOOL	)	
DISTRICT BOARD OF EDUCATION, et	)	CASE NO. 5:16-CV-01973
al.,	)	
	)	JUDGE JOHN R. ADAMS
Plaintiffs,	)	
	)	
v.	)	
	)	
JASON D. WALLACE, et al.	)	
	)	
Defendants.	)	

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**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS WALLACE,  
BACHE, AND WALLACE & BACHE LLC'S JOINT MOTION FOR  
LEAVE TO FILE DEFENDANTS' JOINT ANSWER INSTANTER**

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In response to *Defendants Joint Motion for Leave to File Defendants Wallace, Bache, and Wallace & Bache LLC's Joint Answer of Defendants Instanter* ("Joint Motion"), Plaintiffs, Board of Education for the Nordonias Hills City School District ("Board" or "District") and Hylant Administrative Services, LLC d/b/a HAS Claims Service ("Hylant") (Board and Hylant collectively, "Plaintiffs"), respectfully voice their opposition.

Defendants do not dispute the untimeliness of their proposed Answer. (ECF # 40; PageID # 692.) Rather, Defendants simply claim that their misunderstanding of the Federal Rules of Civil Procedure amounts to "excusable neglect" under Fed.R.Civ.P. 6(b)(1)(B). It does not.

Courts employ an equitable approach in determining whether neglect is excusable, "taking into account all relevant circumstances surrounding the party's omission." *Parma Community General Hosp. v. Premier Anesthesia of Parma*, N.D. Ohio No. 1:09-cv-325, 2011

WL 108891 (Jan. 12, 2011), citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993). Such circumstances include the danger of prejudice; the length of the delay and its potential impact on judicial proceedings; the reason for the delay, including whether it was within the reasonable control of the movant; and, whether the movant acted in good faith. *Id.*

Here, Jason Wallace and Daniel Bache are not only named Defendants, but also attorneys licensed to practice law in Ohio since May 2013 and May 2010, respectively. Attorneys practicing before the federal bar are expected to know and abide by the rules governing civil practice. Moreover, Defendants' Joint Motion is not their first instance in failing to pay heed to the Court's rules and practices (ex., Defendants' failure to timely file their Joint Motion to Dismiss; Defendants' failure to exchange Fed.R.Civ.P. 26(a) initial disclosures; Defendants' failure to respond to Plaintiffs' written demand for damages claimed.). These ongoing delays and/or failures to comply continue to thrust negative financial and judicial impacts upon Plaintiffs (ex., see ECF # 29 – *Plaintiffs' Notice of Costs Incurred Relative to the December 15, 2016 Case Management Conference*). Thus, when taking into account “all relevant circumstances,” it is inequitable to grant Defendants' Joint Motion.

Plaintiffs are not so hubristic to deny that mistakes may happen. However, Defendants' continual attempts to side-step and in some cases ignore such rules – in this case as well as the underlying due process proceedings which precipitated this litigation – give rise to the very reason Plaintiffs are before Court. For these reasons, Defendants' Joint Motion must be denied.

Respectfully submitted,

/s/ Christina Henagen Peer

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### **CERTIFICATE OF SERVICE**

A copy of the foregoing *Plaintiffs' Memorandum in Opposition to Defendants Wallace, Bache, and Wallace & Bache LLC's Joint Motion for Leave to File Defendants' Joint Answer Instante*r has been filed this 21<sup>st</sup> day of February, 2017, through the Court's electronic filing system. All parties may access the foregoing via the Court's electronic filing system.

/s/ Christina Henagen Peer

Christina Henagen Peer